

2008

# State of Utah v. Kidus Chane Yohannes : Brief of Appellant

Utah Court of Appeals

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Case No. 20080149-CA

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IN THE  
UTAH COURT OF APPEALS

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State of Utah,  
Plaintiff/Appellant,

vs.

Kidus Chane Yohannes,  
Defendant/Appellee.

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Brief of Appellant

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Appeal from the dismissal of two counts of making a false statement on a background check, a third degree felony, in the Fourth Judicial District Court of Utah, Utah County, the Honorable Gary D. Stott presiding.

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Oral Argument Requested

FILED  
UTAH APPELLATE COURTS

OCT 27 2008

Case No. 20080149-CA

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Brief of Appellant

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STATEMENT OF JURISDICTION

The State appeals from an order granting defendant's motion to quash the bindover on two counts of making a false statement on a background check, a third degree felony. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2008).

STATEMENT OF THE ISSUE

**Did the** trial court err in determining that Utah Code Ann. § 76-10-527(3) permits an individual to willfully and intentionally make a false statement of the information required for a criminal background check in section 76-10-526, as long as the background check can still be completed, notwithstanding the falsity?

*Standard of Review.* Whether the district court properly interpreted a statute

presents a question of law, reviewed for correctness. *State v. MacGuire*, 2004 UT 4, ¶ 8, 84 P.3d 1171.

*Preservation:* The issue was preserved below. See R. 89-85.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 76-10-527(3) (West 2004), governing penalties for providing false information on a background check, provides in pertinent part:

(3) A person who purchases or transfers a firearm is guilty of a felony of the third degree who willfully and intentionally makes a false statement of the information required for a criminal background check in Section 76-10-526.

Utah Code Ann. § 76-10-526 (West 2004), governing criminal background checks prior to purchasing firearms, provides in pertinent part:

(3) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(4)(a) An individual, except a dealer, purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the division.<sup>[1]</sup>

(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

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<sup>1</sup> “The division” refers to the Criminal Investigations and Technical Services Division of the Department of Public Safety. See Utah Code Ann. § 76-10-501(7) (West 2004).

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the Social Security number or any other identification number of the individual receiving the firearm.

**(5)(a)** The dealer shall send the form required by Subsection (4) to the division immediately upon completion.

(b) No dealer shall sell or transfer any firearm to an individual until the dealer has provided the division with the information in Subsection (4) and has received approval from the division under Subsection (7).

### STATEMENT OF THE CASE

Defendant was originally charged with four counts of making a false statement on a background check, a third degree felony, in violation of Utah Code Ann. § 76-10-527(3) (West 2004). R. 2-1. After a preliminary hearing, a magistrate bound him over for trial on two counts of making a false statement on a background check. R. 39-37, 40. Defendant filed a motion to quash the bindover. R. 59-49. After a hearing, the district court quashed the bindover. R. 103-100 at addendum A. The State filed a timely notice of appeal. R. 105.

### STATEMENT OF FACTS

In the fall of 2007, defendant purchased three AK-47 variants from a firearms dealer in Orem.<sup>2</sup> Preliminary Hearing Tr. ["PHT"] at 8, 12, 13, 15. For each

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<sup>2</sup> An AK-47 variant looks like a military weapon but is **not automatic**. That is, the user must pull the trigger one time for each shot fired. PHT: 19.



purchase, the dealer provided defendant with a form to complete, entitled “Firearms Transaction Record Part I – Over-the-Counter.” *Id.* at 8-9; *see* addendum B. Question 15 of section A, to be completed by the buyer, asked: “If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?” Following this question, above a line for the purchaser’s signature, the following statement appears: “I certify that the answers to Section A are true and correct. . . I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony.” *See* addendum B.

Defendant, an Ethiopian citizen living legally in the United States as a resident alien, completed this form three times, one for each gun purchase. The first time, in September 2007, he responded to question 15 by writing in his correct alien identification number, A75258324. PHT: 18, 38. The second and third times, he responded to question 15 by writing in “99-116-51390,” a number inconsistent with his alien identification number both in its format and length. *Id.* at 22, 25, 38. Based on this false information, the State charged him by amended information with two counts of making a false statement of information required for a background check in Utah Code Ann. § 76-10-526. R. 40.

After bindover, defendant filed a motion to quash. R. 59-49. Following a hearing, the trial court concluded that although defendant twice provided a false alien identification number on the form provided by the gun dealer, “a correct US issued alien number . . . is not required for a criminal background check as contemplated in U.C.A. § 76-10-527(3).” R. 100 at addendum A. Accordingly, the court quashed the bindover. *Id.*

### SUMMARY OF ARGUMENT

Prior to purchasing a firearm from a dealer, a prospective buyer must consent in writing to a criminal history background check. *See* Utah Code Ann. § 76-10-526(3), (4)(a). According to state statute, the prospective buyer must provide, among other information, “the Social Security number or any other identification number of the individual receiving the firearm.” Utah Code Ann. § 76-10-526(4)(b)(iv). Any purchaser who “makes a false statement of the information required for a criminal background check in Section 76-10-526” is guilty of a third degree felony. Utah Code Ann. § 76-10-527(3).

Prior to purchasing firearms on two different days, defendant twice completed the form consenting to a criminal background check. He did not report a social security number, which was listed as “optional” on the form, and the only other identification number he provided, a “U.S. issued alien number,” was

incorrect. Defendant thus made “a false statement of the information required for a criminal background check in Section 76-10-526.” Utah Code Ann. § 76-10-527(3). No more is necessary for a conviction. *See State v. Johnson*, 2007 UT App 392, 174 P.3d 654, *cert. denied*, 187 P.3d 232 (Utah 2008) (where defendant made false statements on his car registration applications, State need prove only elements of offense and need not prove either that it suffered harm as a result of the falsity or disprove that the misinformation could be easily corrected).

## ARGUMENT

**THE TRIAL COURT ERRED IN DETERMINING THAT DEFENDANT DID NOT VIOLATE SECTION 76-10-527(3) BY MAKING “A FALSE STATEMENT OF THE INFORMATION REQUIRED FOR A CRIMINAL BACKGROUND CHECK IN SECTION 76-10-526,” WHERE DEFENDANT PROVIDED A FALSE IDENTIFICATION NUMBER ON THE FORM HE WAS REQUIRED TO COMPLETE PRIOR TO PURCHASING AN ASSAULT WEAPON**

The State charged defendant with two counts of providing false information on a background check. R. 40. Bindover required the State to establish probable cause that defendant “willfully and intentionally [made] a false statement of the information required for a criminal background check in Section 76-10-526.” Utah Code Ann. § 76-10-527(3). This charge breaks down into two elements: first, a mens rea of willful or intentional; and second, an actus reus of making an incorrect or

untrue statement “of the information required for a background check in Section 76-10-526.”<sup>3</sup> The relevant subsection of section 76-10-526 requires “the Social Security number or any other identification number of the individual receiving the firearm.” Utah Code Ann. § 76-10-526(4)(b)(iv).

It is undisputed that defendant provided an incorrect U.S.-issued alien identification number on the form provided by the gun dealer.<sup>4</sup> Indeed, the number was false in many respects: incorrect numerals, incorrect form, and incorrect length. Defendant thus made “a false statement of the information required for a criminal background check in Section 76-10-526.” Utah Code Ann. § 76-10-527(3).

Under these circumstances, *State v. Johnson*, 2007 UT App 392, 174 P.3d 654, controls. *Johnson* held that when an individual made a false statement on his vehicle registration applications, the State need not prove either that he had fraudulent intent or that it suffered harm as a result of the false information. *Id.* at ¶ 15. That the false information could be easily corrected was entirely irrelevant to the court’s

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<sup>3</sup> Only the actus reus is at issue in this appeal.

<sup>4</sup> The consent form provided by the dealer was generated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, within the Department of Justice (“ATF”). Because it was created by a federal agency, it did not track Utah’s statutory requirements. The form included many questions not required by state statute and also omitted the state statutory requirement of a “dealer identification number.” Compare Firearms Transaction Record Part I – Over-the-Counter at addendum A with Utah Code Ann. § 76-10-526(4)(b).

analysis. *Id.* The State simply had to carry its burden of proving each of the statutory elements. *Id.* The same analysis applies here. To establish culpability, all the State needed to do was prove the two elements specified in section 76-10-527(3).

In quashing the bindover, however, the trial court determined that the State had failed to establish probable cause of one element--that defendant had made "a false statement of the information required for a criminal background check in Section 76-10-526." Utah Code Ann. § 76-10-527(3). The court based its conclusion on two factors. First, subsection 76-10-526(4)(b)(iv) does not specifically require a U.S.-issued alien number. Instead, it requests "the Social Security number or any other identification number of the individual receiving the firearm." Utah Code Ann. § 76-10-526(4)(b)(iv). From this, the court concluded that "under U.C.A. § 76-10-526(4)(iv) the ATF form is vague on whether or not a US issued alien number is required for a criminal background check." R. 101 at addendum A.<sup>5</sup>

Second, the court reasoned that defendant's false statement did not constitute criminal conduct because it did not preclude the successful completion of a criminal

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<sup>5</sup> While inartfully worded, the court's conclusion must be that the statute is vague as to its requirements, rather than that the ATF form is vague. The ATF form is clear on its face: "If you are not a citizen of the United States, what is your U.S.-issued alien identification number?" See addendum A. In contrast, the statute refers less specifically to "any other identification number of the individual receiving the firearm." Utah Code Ann. § 76-10-526(4)(b)(iv).

background check. The court reached this conclusion by referencing defendant's Utah Criminal History Record and noting that "a US issued alien number is not required for the Utah Bureau of Criminal Investigation to conduct a criminal background check." R. 100 at addendum A. Because the Utah Bureau of Criminal Investigation was able to complete a criminal background check without a correct U.S.-issued alien identification number, the court concluded that defendant's act of providing a false identification number did not constitute criminally culpable conduct. Accordingly, the court quashed the bindover. *Id.*

The trial court's reasoning is flawed. The governing statute, section 76-10-527(3), prohibits making an untrue statement "of the information required for a criminal background check in Section 76-10-526." Section 76-10-526, in turn, requires that the dealer and the buyer complete a form containing the following information:

- (i) the dealer identification number;
- (ii) the name and address of the individual receiving the firearm;
- (iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and
- (iv) the Social Security number or any other identification number of the individual receiving the firearm.

Utah Code Ann. § 76-10-526(4)(b)(i)-(iv).

The flaw in the trial court's reasoning is that it interpreted section 76-10-527(3) as if it prohibited only false statements "of the information required for a criminal background check" rather than false statements "of the information required for a criminal background check in Section 76-10-526." Utah Code Ann. § 76-10-527(3) (emphasis added). Section 526, by its plain language, forbids making a false statement of both a Social Security number and "any other identification number" the buyer may choose to provide. See generally *Vigos v. Mountainland Builders, Inc.*, 2000 UT 2, ¶ 13, 993 P.2d 207 (absent ambiguity, plain language controls statutory interpretation). Where it is undisputed that defendant provided a false identification number, he plainly violated the statutory prohibition against providing "a false statement of the information required for a criminal background check in Section 76-10-526.

The court's assertion that the incorrect U.S.-issued alien number did not, in fact, impede or preclude a criminal background check does not exonerate defendant. In *Johnson*, this Court rejected a trial court's determination that an individual did not give a false address on an application for car title and registration because the address was "findable" and could be physically located with little trouble. *Johnson*, 2007 UT App 392, ¶ 4. This Court noted, "The statute. . . does not provide for an exemption based on the ability to locate the address despite the false information,

and we decline [defendant's] suggestion that we create one." *Id.* at ¶ 12 n.7. Similarly, this Court should reject the district court's determination that defendant did not provide "false information" because that information was unnecessary to complete a criminal background check. The statute requiring a prospective gun buyer to complete a form that includes his social security number or any other identification number does not provide an exemption based on the ability of an agency to complete a background check without that information.

Indeed, such a policy would be absurd. When an individual seeks to purchase an assault weapon, he is required by statute to disclose certain personal information. He must provide that information truthfully. The statute does not give him permission to provide both true and false information, with culpability for false information turning on whether an investigating agency must later rely on it. A defendant who submits false information required by statute is criminally culpable for making a false statement, regardless of the falsity's impact on the completion of the background check. Defendant committed his crime when he entered a false identification number of information required by statute on a form he was required to complete. Whether an agency could still complete a criminal background check notwithstanding the falsity or whether defendant would have



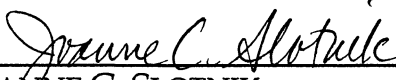
been able to lawfully obtain the weapon without the falsity are both irrelevant. The inquiry properly ends with the false statement. *See Johnson*, 2007 UT App. 392, ¶ 11.

### CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted this 21<sup>st</sup> day of October, 2008.

MARK L. SHURTLEFF  
Utah Attorney General

  
\_\_\_\_\_  
JOANNE C. SLOTNIK  
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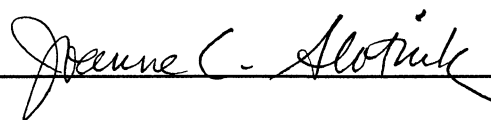
## CERTIFICATE OF SERVICE

I certify that on October 27, 2008, two copies of the foregoing brief were

☒ mailed ☐ hand-delivered to:

Richard P. Gale  
Utah County Public Defender's Office  
245 N. University Avenue  
Provo, Utah 84601

A digital copy of the brief was also included: ☒ Yes ☐ No

  
\_\_\_\_\_

## Addenda

# Addendum A

**FILED**

**JAN 15 2008**

*min*  
**4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY**

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IN THE FOURTH DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

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STATE OF UTAH,	:	
	:	
Plaintiff,	:	<b>FINDINGS OF FACT, CONCLUSIONS OF</b>
	:	<b>LAW AND ORDER</b>
	:	
vs.	:	
	:	Case No. 071402557
KIDUS YOHANNES,	:	
	:	Judge Gary D. Stott
Defendant.	:	

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This matter came before the court for hearing on defendant's Motion to Quash on December 24, 2007. The Defendant was present and represented by his attorney, Richard P. Gale. The State was represented by Deputy Utah County Attorney, Donna Kelly. The court heard argument from the parties and considered the memoranda filed with the court. The Court having considered the Evidence, Motions, and Memoranda of the parties does hereby make and enter the following Findings of Fact, Conclusions of Law, and Order:

## FINDINGS OF FACT

The court finds the facts are as follows:

1. On September 20, 2007, Kidus Yohannes was bound over to stand trial on two counts of Making a False Statements Pursuant to a Firearms Background Check in violation of U.C.A. § 76-10-527(3).
2. Mr. Yohannes purchased firearms on October 25<sup>th</sup> and 27<sup>th</sup> 2006. On each of the two days he purchased the firearms, Mr. Yohannes completed an ATF form 4473 entitled "Firearms Transaction Record Part 1 Over-the-Counter." On both ATF forms Mr. Yohannes provided his correct name, address, date of birth, height, and weight in lines 1,2,4,5, and 7.
3. Line 20a of the ATF form is entitled "Identification." Mr Yohannes presented a valid Utah Drivers License and the number and expiration date were noted on lines 20a in both forms.
4. On lines 15 in both forms, Mr. Yohannes wrote down a number 99-116-51390 which is not his "US.-issued alien number."
5. Contained in Mr. Yohannes' "Utah Criminal History Record" is a section entitled "Identification Data" In this section the following information is included: name, aliases, state identification number, FBI number, sex, height, weight, race, hair color, eye color, date of birth, scars, place born, and social security number. The criminal history form

does not contain any data associated with a US. Issued alien number.

6. U.C.A. § 76-10-527(3) provides:

A person who purchases or transfers a firearm is guilty of a felony of the third degree who willfully and intentionally makes a false statement of the information required for a criminal background check in Section 76-10-526.

7. U.C.A. § 76-10-526(4) provides, in relevant part:

(a) An individual, except a dealer, purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the division.

(b) The form shall contain the following information:

- (i) the dealer identification number;
- (ii) the name and address of the individual receiving the firearm;
- (iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and
- (iv) the Social Security number or any other identification number of the individual receiving the firearm.

### CONCLUSIONS OF LAW

1. The court concludes that U.C.A. § 76-10-527(3) prohibits willfully and intentionally making a false statement of the information *required for a criminal background check*.
2. The court concludes Mr. Yohannes provided the correct information as required by . U.C.A. § 76-10-526(4)sections (i)(ii) and (iii).
3. The court concludes that under U.C.A. § 76-10-526(4)(iv) the ATF form is vague on whether or not a US issued alien number is required for a criminal background check.
4. The court concludes that based on the information contained in the Identification Data

portion of Mr. Yohannes' Utah Criminal History Record, a US issued alien number is not required for the Utah Bureau of Criminal Investigation to conduct a criminal background check.

4. The court concludes that a correct US issued alien number may be important for other background checks but is not required for a criminal background check as contemplated in U.C.A. § 76-10-527(3).

### ORDER

Based on foregoing Findings of Fact and Conclusions of Law the court hereby concludes that the state did not make a sufficient showing for the court to determine that probable cause exists that Mr. Yohannes willfully and intentionally made a false statement of the information required for a criminal background check. Therefore, this court bind-over order on both counts against Mr. Yohannes are quashed.

Signed this 15 day of January, 2008.

  
Gary D. Stott  
Fourth District Court Judge





## Addendum B

Firearms Transaction Record Part I -  
Over-the-Counter

**WARNING:** You may not receive a firearm if prohibited by Federal or State Law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction Serial Number

54772

Prepare in original only. All entries must be in ink. Read the Important Notices, Instructions and Definitions on this form. "Please Print"

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name

Last Name

First Name

Middle Name (If no middle name state "NMN")

Y. HARRIS

K. H. S.

CLARE

2. Current Residence Address (Cannot be a post office box.)

Number and Street Address

City

County

State

Zip Code

574 West

1800 North

Provo

Utah

Utah

84604

3. Place of Birth

4. Height

5. Weight

6. Gender

7. Birth Date

U.S. City/State

Foreign Country

Ft.

In.

Male ☒

Female ☐

Month

Day

Year

Ethiopia

5  
11

170

5

5

1987

8. Social Security Number (Optional, but will help prevent misidentification.)

9. Unique Personal Identification Number (UPIN) if applicable (See Instruction to Transferor 6.)

10. Race (Ethnicity) (Check one or more boxes.)

☐ American Indian or Alaska Native

☒ Black or African American

☐ Native Hawaiian or Other Pacific Islander

☐ Hispanic or Latino

☐ Asian

☐ White

11. Answer questions 11.a. through 12 by writing "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)

Yes

b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)

No

c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 4, Exception 1.)

No

d. Are you a fugitive from justice?

No

e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?

No

f. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?

No

g. Have you been discharged from the Armed Forces under dishonorable conditions?

No

h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 5.)

No

i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 4, Exception 1 and Definition 4.)

No

j. Have you ever renounced your United States citizenship?

No

k. Are you an alien illegally in the United States?

No

l. Are you a nonimmigrant alien? (See Definition 6.) If you answered "no" to this question, you are not required to respond to question 12.

No

12. If you answered "yes" to question 11.l, do you fall within any of the exceptions set forth in Important Notice 4, Exception 2? (e.g., valid State hunting license.) (If "yes," the licensee must complete question 20c.)

13. What is your State of residence (if any)? Utah (See Definition 5. If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days immediately prior to the date of this sale.)

14. What is your country of citizenship? (List/check more than one, if applicable)

☐ United States of America

☒ Other (Specify) Ethiopia

15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?

A 75 258 324

I certify that the answers to Section A are true and correct. I am aware that ATF Form 4473 contains Important Notices, Instructions, and Definitions. I understand that answering "yes" to question 11.a. if I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 6.)

16. Transferee's/Buyer's Signature

17. Certification Date

**Section B - Must Be Completed By Transferor (Seller)**

18. Type of firearm(s) to be transferred:

☐ Handgun

☒ Long Gun

☐ Both

19. Location of sale if at a gun show or other qualifying event. (See Instruction to Transferor 15.)

(City, State)

20a. Identification (e.g., driver's license or other valid government-issued photo identification.) (See Instruction to Transferor 1.)

Type of Identification

Utah D.L.

Number on Identification

17432641

Expiration Date of Identification (if any)

Month

Day

Year

2011

20b. Aliens only: Type and dates of additional required identification (e.g., utility bills or lease agreements.) (See Instruction to Transferor 2.)

Type of Identification

Date(s)

20c. Nonimmigrant aliens only: Type of documentation showing an exception to the nonimmigrant alien prohibition (e.g., hunting license/permit; waiver.) (See Instruction to Transferor 3.)

**Question 21, 22, or 23 Must Be Completed Prior to the Transfer of the Firearm(s) (See Instructions to Transferor 5-8.)**

21a. The transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency on: 9/2/05 (date)

320311552

21c. The response initially provided by NICS or the appropriate State agency was:

☒ Proceed  
☐ Denied  
☐ Cancelled

☐ Delayed

[The firearm(s) may be transferred on \_\_\_\_\_ (MDI date provided by NICS) if State law permits (optional)]

☐ Proceed

(date)

☐ Denied

(date)

☐ Cancelled

(date)

☐ No resolution was provided within 3 business days.

21e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: (date) ☐ Proceed ☐ Denied ☐ Cancelled

21f. The name and Brady identification number of the NICS examiner (optional) \_\_\_\_\_ (name) \_\_\_\_\_ (number)

22. ☐ No NICS check was required because the transfer involved only NFA firearm(s). (See Instruction to Transferor 8.)

23. ☐ No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place which qualifies as an exemption to NICS (See Instruction to Transferor 8.)

State Permit Type

Date of Issuance (if any)

Expiration Date (if any)

Permit Number (if any)

**Section C**

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (buyer) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See Instruction to Transferee 3 & Instruction to Transferor 9.)

I certify that the answers I provided to the questions in Section A of this form are still true and correct.

24. Transferee's/Buyer's Signature

25. Recertification Date

**Section D (See Instructions to Transferor 10-11.)**

26. Manufacturer and/or Importer	27. Model	28. Serial Number	29. Type (pistol, revolver, rifle, shotgun, etc.)	30. Caliber or Gauge
Yugoslavian	SKS	D72587	rifle	762x3

DISCOVERY SENT TO  
DEFENSE ATTORNEY

Firearms Transaction Record Part I -  
Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State Law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction Serial Number

56821

Prepare in original only. All entries must be in ink. Read the Important Notices, Instructions and Definitions on this form. "Please Print."

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name

Last Name YOHANNES First Name Kidus Middle Name (If no middle name state "NMN") chane

2. Current Residence Address (Cannot be a post office box.)

Number and Street Address 574 West 1800 North City Provo County Utah State Utah Zip Code 84604

3. Place of Birth Ethiopia 4. Height 5' 5. Weight 170 6. Gender ☒ Male ☐ Female 7. Birth Date 5 / 9 / 1987  
U.S. City/State Foreign Country Ft. In. Month Day Year

8. Social Security Number (Optional, but will help prevent misidentification.)

9. Unique Personal Identification Number (UPIN) if applicable (See Instruction to Transferor 6.)

10. Race (Ethnicity) (Check one or more boxes.)

☐ American Indian or Alaska Native ☒ Black or African American ☐ Native Hawaiian or Other Pacific Islander  
☐ Hispanic or Latino ☐ Asian ☐ White

11. Answer questions 11.a. through 12 by writing "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)	Yes
b. Are you under indictment or information in any court for a felony or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)	No
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 4, Exception 1.)	No
d. Are you a fugitive from justice?	No
e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	No
f. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?	No
g. Have you been discharged from the Armed Forces under dishonorable conditions?	No
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 5.)	No
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 4, Exception 1 and Definition 4.)	No
j. Have you ever renounced your United States citizenship?	No
k. Are you an alien illegally in the United States?	No
l. Are you a nonimmigrant alien? (See Definition 6.) If you answered "no" to this question, you are not required to respond to question 12.	No
12. If you answered "yes" to question 11.l., do you fall within any of the exceptions set forth in Important Notice 4, Exception 2? (e.g., valid State hunting license.) (If "yes," the licensee must complete question 20c.)	

13. What is your State of residence (if any)? Utah (See Definition 5. If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days immediately prior to the date of this sale.)

14. What is your country of citizenship? (List/check more than one, if applicable.)

☐ United States of America ☒ Other (Specify) Ethiopia

15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number? 99-116-51390

I certify that the answers to Section A are true and correct. I am aware that ATF Form 4473 contains Important Notices, Instructions, and Definitions. I understand that answering "yes" to question 11.a. if I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 6.)

16. Transferee's/Buyer's Signature

*[Signature]*

17. Certification Date

10/24/06

Section B - Must Be Completed By Transferor (Seller)

18. Type of firearm(s) to be transferred:

☐ Handgun

☒ Long Gun

☐ Both

19. Location of sale if at a gun show or other qualifying event. (See Instruction to Transferor 15.)

(City, State)

20a. Identification (e.g. driver's license or other valid government-issued photo identification) (See Instruction to Transferor 1)

Type of Identification

Utah D.L.

Number on Identification

174326241

Expiration Date of Identification (if any)  
Month Day Year

05/09/2011

20b. Aliens only: Type and dates of additional required identification (e.g., utility bills or lease agreements) (See Instruction to Transferor 2)

Type of Identification

Date(s)

20c. Nonimmigrant aliens only: Type of documentation showing an exception to the nonimmigrant alien prohibition (e.g., hunting license/permit, waiver.) (See Instruction to Transferor 3.)

Questions 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions to Transferor 5-8.)

21a. The transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency on: (Date)

NICS or the appropriate State agency on:

10/24/06

7579139

21c. The response initially provided by NICS or the appropriate State agency was:

☐ Proceed

☒ Delayed

☐ Denied

☐ Cancelled

(The firearm(s) may be transferred on

(MDI date provided by NICS)

if State law permits (optional))

21d. If initial NICS or State response was "Delayed," the following response was received from NICS or the appropriate State agency:

☒ Proceed

10/25/06 (date)

☐ Denied

(date)

☐ Cancelled

(date)

☒ No resolution was provided within 3 business days.

21e. (Complete if applicable) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on (date):

☐ Proceed

☐ Denied

☐ Cancelled

21f. The name and Brady identification number of the NICS examiner (optional)

(name)

(number)

22. ☐ No NICS check was required because the transfer involved only NFA firearm(s) (See Instruction to Transferor 8)

23. ☐ No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place which qualifies as an exemption to NICS (See Instruction to Transferor 8)

State Permit Type

Date of Issuance (if any)

Expiration Date (if any)

Permit Number (if any)

Section C

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (buyer) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s) (See Instruction to Transferee 3 & Instruction to Transferor 9.)

I certify that the answers I provided to the questions in Section A of this form are still true and correct.

24. Transferee's/Buyer's Signature

*[Signature]*

25. Recertification Date

10/25/06

Section D (See Instructions to Transferor 10-11.)

26. Manufacturer and/or Importer	27. Model	28. Serial Number	29. Type (pistol, revolver, rifle, shotgun, etc.)	30. Caliber or Gauge
Arsenal	SUR105	KG 446958		545X39.

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

## Firearms Transaction Record Part I - Over-the-Counter

**WARNING:** You may not receive a firearm if prohibited by Federal or State Law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction Serial Number

58996

Prepare in original only. All entries must be in ink. Read the Important Notices, Instructions and Definitions on this form. "Please Print."

### Section A - Must Be Completed Personally By Transferee (Buyer)

#### 1. Transferee's Full Name

Last Name

First Name

Middle Name (If no middle name state "NMN")

Yohannes

Kidus

Chane

#### 2. Current Residence Address: (Cannot be a post office box.)

Number and Street Address

City

County

State

Zip Code

1800 North 574 West

Provo

Utah

Utah

84604

#### 3. Place of Birth

U.S. City/State

Foreign Country

#### 4. Height

Ft.

In.

#### 5. Weight

170

#### 6. Gender

Male ☒

Female ☐

#### 7. Birth Date

Month

Day

Year

Europe

Ethiopia

5  
11

May

9th

1987

#### 8. Social Security Number (Optional, but will help prevent misidentification.)

#### 9. Unique Personal Identification Number (UPIN) if applicable (See Instruction to Transferor 6.)

#### 10. Race (Ethnicity) (Check one or more boxes.)

☐ American Indian or Alaska Native

☒ Black or African American

☐ Native Hawaiian or Other Pacific Islander

☐ Hispanic or Latino

☐ Asian

☐ White

#### 11. Answer questions 11.a. through 12 by writing "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual buyer of the firearm(s) listed on this form? <b>Warning:</b> You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)	Yes
b. Are you under indictment or information in any court for a felony or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)	No
c. Have you ever been convicted in any court of a felony or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 4, Exception 1.)	No
d. Are you a fugitive from justice?	No
e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	No
f. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?	No
g. Have you been discharged from the Armed Forces under dishonorable conditions?	No
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 5.)	No
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 4, Exception 1 and Definition 4.)	No
j. Have you ever renounced your United States citizenship?	No
k. Are you an alien illegally in the United States?	No
l. Are you a nonimmigrant alien? (See Definition 6.) If you answered "no" to this question, you are not required to respond to question 12.	No
12. If you answered "yes" to question 11.l., do you fall within any of the exceptions set forth in Important Notice 4, Exception 2? (e.g., valid State hunting license.) (If "yes," the licensee must complete question 20c.)	

#### 13. What is your State of residence (if any)? (See Definition 5. If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days immediately prior to the date of this sale.)

#### 14. What is your country of citizenship? (List/check more than one, if applicable.)

☐ United States of America

☒ Other (Specify) Ethiopia

#### 15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number? 99-116-51390

certify that the answers to Section A are true and correct. I am aware that ATF Form 4473 contains Important Notices, Instructions, and definitions. I understand that answering "yes" to question 11.a. if I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 6.)

5. Transferee's/Buyer's Signature

*[Signature]*

17. Certification Date

10/26/06

Section B - Must Be Completed By Transferor (Seller)

8. Type of firearm(s) to be transferred:

☐ Handgun

☒ Long Gun

☐ Both

19. Location of sale if at a gun show or other qualifying event. (See Instruction to Transferor 15.)

(City, State)

19a. Identification (e.g., driver's license or other valid government-issued photo identification.) (See Instruction to Transferor 1.)

Type of Identification

Utah D.L.

Number on Identification

174326241

Expiration Date of Identification (if any)

Month 5 Day 19 Year 2011

19b. Aliens only: Type and dates of additional required identification (e.g., utility bills or lease agreements.) (See Instruction to Transferor 2.)

Type of Identification

Date(s)

19c. Nonimmigrant aliens only: Type of documentation showing an exception to the nonimmigrant alien prohibition (e.g., hunting license/permit; waiver.) (See Instruction to Transferor 3.)

Question 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions to Transferor 5-8.)

21a. The transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency on: 10/26/06 (date)

21b. The NICS or State transaction number (if provided) was: 35261975

21c. The response initially provided by NICS or the appropriate State agency was:

☒ Proceed

☒ Delayed

☐ Denied

☐ Cancelled

(The firearm(s) may be transferred on \_\_\_\_\_ (MDI date provided by NICS) if State law permits (optional))

21d. If initial NICS or State response was "Delayed," the following response was received from NICS or the appropriate State agency:

☒ Proceed

☐ Denied

☐ Cancelled

☐ No resolution was provided within 3 business days.

21e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: \_\_\_\_\_ (date). ☐ Proceed ☐ Denied ☐ Cancelled.

21f. The name and Brady identification number of the NICS examiner (optional) \_\_\_\_\_ / \_\_\_\_\_ (name) (number)

22. ☐ No NICS check was required because the transfer involved only NFA firearm(s). (See Instruction to Transferor 8.)

23. ☐ No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place which qualifies as an exemption to NICS (See Instruction to Transferor 8.)

State Permit Type

Date of Issuance (if any)

Expiration Date (if any)

Permit Number (if any)

Section C

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (buyer) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See Instruction to Transferee 3 & Instruction to Transferor 9.)

I certify that the answers I provided to the questions in Section A of this form are still true and correct.

24. Transferee's/Buyer's Signature

*[Signature]*

25. Recertification Date

10/27/06

Section D (See Instructions to Transferor 10-11.)

26. Manufacturer and/or Importer	27. Model	28. Serial Number	29. Type (pistol, revolver, rifle, shotgun, etc.)	30. Caliber or Gauge
Romanian	WASR	FM4953-76		762X39